

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
HITACHI DATA SYSTEMS CORPORATION)
750 Central Expressway)
Santa Clara, California 95050-2627,)
)
Respondent)

ORDER

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having notified Hitachi Data Systems Corporation (HDS) of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the Act),¹ and the Export Administration Regulations (15 C.F.R. Parts 730-774 (1997)) (the Regulations),² based on allegations that, on or about February 21, 1993, HDS

¹The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

² The alleged violations occurred in 1993. The Regulations governing the violations at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

exported computer equipment from the United States to South Africa without obtaining from BXA the validated license required by Section 772.1(b) of the former Regulations, in violation of Section 787.6 of the former Regulations, and that, in connection with that shipment, HDS made a false or misleading statement of material fact directly or indirectly to a U.S.

Government agency in connection with the preparation, submission or use of an export control document, in violation of Section 787.5(a) of the former Regulations; and

BXA and HDS having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$6,000 is assessed against HDS, which shall be paid within 30 days of the date of this Order. Payment shall be made in the manner specified in the attached instructions.


SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1998)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due date specified herein, HDS will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that, as authorized by Section 11(d) of the Act, the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to HDS.

Accordingly, if HDS should fail to pay in a timely manner the civil penalty set forth above, the undersigned will enter an Order under the authority of Section 11(d) of the Act denying all of HDS's export privileges for a period of one year from the date of this Order.

FOURTH, that the proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.


F. Amanda DeBusk
Assistant Secretary
for Export Enforcement

Entered this 5th day of June, 1998.

INSTRUCTIONS FOR PAYMENT OF CIVIL PENALTY

1. The civil penalty check should be made payable to:

U.S. Department of Commerce

2. The check should be mailed to

U.S. Department of Commerce
Bureau of Export Administration
Export Enforcement Team
Room H-6622
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

ATTN: Miriam Cohen

NOTICE

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty and the rights, if any, the respondent may have to seek review, both within the U.S. Department of Commerce and the courts. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E(1983 and Supp. 1998)), and the Federal Claims Collection Standards (4C.F.R. Parts 101-105 (1997)), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed respondent is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and respondent will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The foregoing constitutes the initial written notice and demand to respondent in accordance with section 102.2(b) of the Federal Claims Collection Standards (4 C.F.R. § 102.2.(b)).

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
HITACHI DATA SYSTEMS CORPORATION)
750 Central Expressway)
Santa Clara, California 95050-2627,)
)
Respondent)

SETTLEMENT AGREEMENT

This Agreement is made by and between Hitachi Data Systems Corporation (HDS) and the Bureau of Export Administration, United States Department of Commerce, pursuant to Section 766.18(a) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (1997)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the Act).²

¹The alleged violations occurred in 1993. The Regulations governing the violations at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

²The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

Whereas, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), has notified HDS of its intention to initiate an administrative proceeding against it pursuant to the Act and the Regulations, based on allegations that, on or about February 21, 1993, HDS exported computer equipment from the United States to South Africa without obtaining from BXA the validated license required by Section 772.1(b) of the former Regulations, in violation of Section 787.6 of the former Regulations, and that, in connection with that shipment, HDS made a false or misleading statement of material fact directly or indirectly to a U.S. Government agency in connection with the preparation, submission or use of an export control document, in violation of Section 787.5(a) of the former Regulations;

Whereas, HDS has reviewed the proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; it fully understands the terms of this Settlement Agreement and the proposed Order; it enters into this Settlement Agreement voluntarily and with full knowledge of its rights, and it states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

Whereas, HDS neither admits nor denies the allegations contained in the proposed Charging Letter;

Whereas, HDS wishes to settle and dispose of all matters alleged in the proposed Charging Letter by entering into this Settlement Agreement; and

Whereas, HDS agrees to be bound by an appropriate Order giving effect to the terms of this Settlement Agreement, when entered (appropriate Order);

Now Therefore, HDS and BXA agree as follows:

1. BXA has jurisdiction over HDS, under the Act and the Regulations, in connection with the matters alleged in the proposed Charging Letter.
2. BXA and HDS agree that the following sanction shall be imposed against HDS in complete settlement of the alleged violations of the Act and former Regulations arising out of the transaction set forth in the proposed Charging Letter:
 - (a) HDS shall be assessed a civil penalty of \$6,000, which shall be paid within 30 days of the date of entry of an appropriate Order;
 - (b) As authorized by Section 11(d) of the Act, the timely payment of the civil penalty agreed to in paragraph 2(a) is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to HDS. Failure to make timely payment of the civil penalty shall result in the denial of all of HDS's export privileges for a period of one year from the date of entry of the appropriate Order imposing the civil penalty.
3. HDS agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Settlement Agreement or the appropriate Order, when entered), including, without limitation, any right: (a) to an administrative hearing regarding the allegations in the proposed Charging Letter; (b) to request a refund of any civil penalty paid pursuant to this Settlement Agreement and the appropriate Order, when

entered; and (c) to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the appropriate Order, when entered.

4. BXA agrees that, upon entry of an appropriate Order, it will not initiate any administrative proceeding against HDS in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed Charging Letter.

5. HDS understands that BXA will make the proposed Charging Letter, this Settlement Agreement, and the appropriate Order, when entered, available to the public.

6. BXA and HDS agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and an appropriate Order is not issued by the Assistant Secretary for Export Enforcement pursuant to Section 766.18(a) of the Regulations, BXA and HDS agree that they may not use this Settlement Agreement in any administrative or judicial proceeding and that neither party shall be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered, nor shall this Settlement Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Settlement Agreement shall become binding on BXA only when the Assistant Secretary for Export Enforcement approves it by entering an appropriate Order,

which will have the same force and effect as a decision and Order issued after a full administrative hearing on the record.

BUREAU OF EXPORT ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

HITACHI DATA SYSTEMS
CORPORATION

BY: Mark D. Menefee
Mark D. Menefee
Acting Director
Office of Export Enforcement

Date: May 4, 1998

BY: Alastair Short
Alastair Short
Senior Vice President

Date: April 30 '98



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hitachi Data Systems Corporation
750 Central Expressway
Santa Clara, California 95056-0996

Attention: Luke Alexander
Director, Export Compliance

Gentlemen:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described in detail below, Hitachi Data Systems (HDS) has violated the Export Administration Regulations (15 C.F.R. Parts 730-774 (1997)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the Act).²

Facts constituting violations:

CHARGE 1

On or about February 21, 1993, HDS exported computer equipment from the United States to South Africa without obtaining from BXA the validated license required by Section 772.1(b) of the former Regulations. BXA alleges that, by exporting a commodity to any person or

¹ The alleged violations occurred in 1993. The Regulations governing the violations at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth in this Charging Letter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)) (IEEPA)



destination or for any use in violation of or contrary to the terms, provisions, or conditions of the Act, or any regulation, order, or license issued thereunder, HDS violated Section 787.6 of the former Regulations.

CHARGE 2

In connection with the shipment described in Charge 1 above, HDS prepared a Shipper's Export Declaration, defined as an export control document in Section 770.2 of the former Regulations, representing that the goods were being shipped under an individual validated license. In fact, the Department had not issued a validated license authorizing the export. BXA alleges that, by making a false or misleading statement of material fact directly or indirectly to a U.S. Government agency in connection with the preparation, submission or use of an export control document, HDS violated Section 787.5(a) of the former Regulations.

BXA alleges that HDS committed one violation of Section 787.5(a) and one violation of Section 787.6, for a total of two violations of the former Regulations.

Accordingly, HDS is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations);

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice before BXA (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If HDS fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

HDS is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer, to be represented by counsel, and to seek a settlement.

- Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required

UNITED STATES DEPARTMENT OF
COMMERCE
NEWS

WASHINGTON, D.C. 20230

E588-13
BUREAU OF
EXPORT
ADMINISTRATION

FOR IMMEDIATE RELEASE:

June 5, 1998

www.bxa.doc.gov

CONTACTS: Susan Hofer

Eugene Cottilli

(202) 482-2721

**HITACHI DATA SYSTEMS PAYS \$6,000 TO
SETTLE CHARGES OF ILLEGAL COMPUTER EXPORT**

WASHINGTON - The Commerce Department's Bureau of Export Administration (BXA) today imposed a \$6,000 civil penalty on Hitachi Data Systems of Santa Clara, Calif. for allegedly violating the Export Administration Regulations when it shipped a mainframe computer and related components to the Republic of South Africa in 1993, F. Amanda DeBusk, assistant secretary for Export Enforcement, announced.

The Department alleged that the value of the shipment exceeded the amount which had been authorized on an individual validated export license issued by BXA. Export licenses for specific transactions are defined by unit or value, and if the commodities exceed that level, items may not be shipped until the exporter obtains either an amendment to the license or a new export license. Hitachi Data Systems voluntarily disclosed the overshipment to BXA. BXA's Office of Export Enforcement San Jose Field Office investigated the case.

The Department of Commerce, through its Bureau of Export Administration administers and enforces export controls for reasons of national security, foreign policy, nonproliferation, and short supply. Criminal penalties, as well as administrative sanctions, can be imposed for violations.